

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICANT: IMPELLIZZERI, Frederic

SERIAL NO.: 10/530,683

ART UNIT: 3733

FILED: September 02, 2005

EXAMINER: Hoffman, M. C.

TITLE: SELF-LOCKING OSTEOSYNTHESIS DEVICE

Amendment E: REMARKS

Upon entry of the present amendments, Claims 1 -18, 22, 24 and 27 have been previously canceled, and Claims 19-21, 23, 25-26 and 28 are currently pending. The independent Claims 26 and 28 have been amended. Reconsideration of the rejections, in light of the forgoing amendments and present remarks, is respectfully requested. The present amendments have been entered for the purpose of distinguishing the present invention from the prior art.

In the Office Action, it was indicated that Claims 19-21, 23, 25 and 28 were rejected under 35 U.S.C. §112, first paragraph for failing to comply with the written description requirement. Claim 26 was rejected under 35 U.S.C. § 103(a) as being obvious over the Kummer patent in view of the Frigg patent.

As an overview to the present reply, independent Claims 19 and 28 have been re-presented with specific reference to the original disclosure. There is no new matter of the descriptions of the claim elements, and more specific guidance is provided herein. Claim 26 has been amended to more accurately define the features of the invention, which are not shown nor suggested by the cited prior art combination.

With respect to the new matter rejection of the term "uniform" in Claim 19, Applicant respectfully contends that the subject matter is not new. Consider Figures 4-6, which have always

shown the same cross-sectional view of the insert. The insert has always been presented as having the same cross-section along the insert's circular axis. Applicant acknowledges that "uniform" is not present as a "magic word" in the text of the specification. However, Applicant is not insistent upon the use of this term, either. The physical element has never changed, and there is no new matter added to the disclosure of the insert. Applicant would be satisfied with any suitable term to describe the physical structure that has been consistent from the beginning. The differences from the prior art for this feature is clear; thus, Applicant respectfully contends that this word choice simply does not render this structure to be new matter.

Applicant is willing to accept suggestions from the Examiner. "Having a same cross-section along a circular axis thereof" or "having a constant cross-section along a circumference" are other suggestions. The Examiner is invited to contact Applicant's attorney by telephone for reaching an agreement on this terminology.

With respect to the rejection of the term "planarly fixed" in Claim 28, Applicant respectfully contends that the subject matter is not new. This term was added to the claim language in August 2007. More than one amendment and an entire year has passed without this rejection. Similar to the response to the previous new matter rejection, this subject matter is not new, and it has not changed. Figures 4-6 show and have always shown that the position of the insert remains fixed in the plane of the metal plate. Applicant notes that the Examiner's assertion of "rounded" is simply not accurate. Consider Figure 4. There is no rounded anything. The lines are straight, and they always have been. The circular opening is round, but the surfaces and edges have never been presented as alleged in the Office Action.

Claim 28 has been amended to include another suggestion for the description of the disclosed

subject matter. The "constantly aligned" term more accurately describes the feature of the present invention. The planar relationship or planar alignment between the insert and the metal plate remain constant, unlike the prior art combination. The swiveling rings of the prior art provided more flexibility for the insertion of the screws, and these inserts are eventually fixed into place. However, the placement was never maintained, like in the present invention, for the benefit of improved stability and consistent installation. One of the cited benefits of the present invention is the avoidance of such wobbling insert rings of the prior art. See Paragraphs [0034]-[0036] of the specification.

Again, Applicant is willing to accept suggestions from the Examiner for this description of the old subject matter from the original drawings.

With regard to the obviousness rejection, Applicant has amended Claim 26. The fixed relationship between the insert and the shoulder has been more clearly described so as to avoid the prior art combination. Additionally, the claim language for reciting the self-tapping of the conical head is improved to distinguish the prior art combination. The conical head is fixed in all prior art systems, but the present invention now specifies the self-tapped positioning that is not disclosed by the prior art combination.

It is important to note that Applicant is aware that the state of the art in the field of these osteosynthesis devices is advanced. All of the devices must involve a fixation of the plate and bone in some manner and a screwing engagement that is stabilized. Applicant has offered an invention that is just as patentable as the prior art technology in this field. The claim language properly recites the features of the invention without reliance upon fixation and angular installation, which are common in the prior art. Applicant respectfully contends that the structures and relationships

between parts are patentable with respect to achieving the common goals of osteosynthesis devices generally. Applicant acknowledges the Examiner extensive time devoted to the present invention, and Applicant's attorney is appreciative of the thoughtful consideration of this matter.

With respect to the prior art rejections, Applicant respectfully contends that prior art combination of the Kummer patent in view of the Frigg patent no longer makes the present invention obvious. With respect to the new matter rejections, Applicant respectfully contends that nothing has been added to the subject matter of the invention and that Applicant's specific word choices for elements in a drawing cannot suddenly make an old drawing into new matter.

A Petition for Extension of Time with the requisite government fee is filed concurrent with the present amendment.

Based upon the foregoing analysis, Applicant contends that independent Claims 19, 26 and 28 are now in proper condition for allowance. Additionally, those claims which are dependent upon these independent claims should also be in condition for allowance. Reconsideration of the rejections and allowance of the claims at an early date is earnestly solicited. Since no new claims have been added above those originally paid for, no additional fee is required.

Respectfully submitted,

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